

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MAJOR TRENCE KINNEY,  
*Petitioner.*

No. 2 CA-CR 2018-0244-PR  
Filed November 14, 2018

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR033165  
The Honorable Kenneth Lee, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Major Trence Kinney, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

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S T A R I N G, Presiding Judge:

¶1 Petitioner Major Kinney seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Kinney has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Kinney was convicted of three counts of sexual conduct with a minor, and the trial court sentenced him to consecutive, presumptive prison terms, the longest of which was life without the possibility of parole for thirty-five years. This court affirmed the convictions and sentences on appeal. *State v. Kinney*, No. 2 CA-CR 91-0803 (Ariz. App. Dec. 31, 1992) (mem. decision). Kinney thereafter sought and was denied post-conviction relief, and this court denied relief on review in 1995. *State v. Kinney*, No. 2 CA-CR 94-0478-PR (Ariz. App. Jan. 31, 1995) (mem. decision). Kinney was again denied post-conviction relief in 2001.

¶3 In 2018, Kinney filed a “motion requesting relief/remedy from ‘judicial misconduct’ and the ‘illegal sentence’ imposed in an ‘unlawful manner.’”<sup>1</sup> He argued his trial judge had committed “judicial misconduct” based on the judge subsequently having been convicted of

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<sup>1</sup>Although Kinney titled his filing a “motion,” rather than filing a notice pursuant to Rule 32, he has cited no rule providing for a post-trial motion in this context and his claims therefore fall under Rule 32, which “displaces and incorporates all trial court post-trial remedies except those obtainable” under provided motions and habeas corpus. Ariz. R. Crim. P. 32.3(a).

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felony tax- and reporting-violation charges in 1996.<sup>2</sup> The trial court summarily denied relief.

¶4 On review Kinney again argues the trial judge committed judicial misconduct. This claim, however, even if construed as a claim of newly discovered evidence rather than one of trial error, could have been raised in Kinney's previous Rule 32 proceeding. It also could have been raised as early as 1996, when the judge who had presided at his trial was convicted. The claim is therefore untimely and precluded and cannot be raised in this proceeding. Ariz. R. Crim. P. 32.2(a)(2), (3), 32.4(a)(2)(A), (D). The trial court therefore properly denied relief.

¶5 For these reasons, although we grant the petition for review, we deny relief.

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<sup>2</sup>Kinney also claimed his sentence was illegal as a violation of the prohibition against cruel and unusual punishment, citing *State v. Bartlett*, 171 Ariz. 302 (1992). Although he mentions the claim on review, he does not develop any argument related thereto, and we therefore do not address it. See *State v. Rodriguez*, 227 Ariz. 58, n.4 (App. 2010) (declining to address argument not raised in petition for review).